



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 23-00136
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

09/01/2023

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 16, 2020. On March 2, 2023, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DoD acted under Executive Order (Exec. Or.) 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended; DoD Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant submitted his Answer to the SOR on March 22, 2023, and requested a decision on the written record without a hearing. On April 20, 2023, Department Counsel submitted the Government's written case, the file of relevant material (FORM). On April 21, 2023, a complete copy of the FORM was sent to Applicant, who was given an

opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on May 4, 2023, and submitted a Response with enclosures. The SOR, the Answer, and Response are the pleadings in the case. FORM Items 3 through 8, and pages 5-26 of the Answer, which are various documents, are admitted into evidence without objection. Various documents submitted with the Answer will be cited as Answer at the applicable page number. The Response contained eight Applicant exhibits (AE), to which the Government did object. They are admitted into evidence. The case was assigned to me on June 28, 2023.

Findings of Fact

In Applicant's Answer to the SOR he admitted all of the allegations, SOR ¶¶ 1.a-m, and provided explanations and documentation pertaining to the allegations. He provided proof that he recently established payment plans and initiated payment of the debts for SOR ¶¶ 1.a-1.e, 1.g; (2) demonstrated that allegation SOR ¶ 1.i was paid; (3) asserted SOR ¶ 1.j was a duplicate of the allegation to SOR ¶ 1.i based on the credit reports; (4) SOR ¶ 1.k was a duplicate of SOR ¶ 1.d; and (5) admitted to the remaining debts, SOR ¶¶ 1.f and 1.h. In his Response, he provided his Federal and state tax returns for tax years 2015 and 2020, as well as 2022. His admissions are incorporated in my findings of fact.

Applicant is 43 years old. He has worked for his sponsor since June 2022. (Answer at 1, Item 4 at 35, Item 3.) He is a high school graduate and has attended some college. In March 2022, his wife of over 15 years passed away. They had two children, but one of his children has passed away. The surviving child is in elementary school. Applicant currently does not hold a security clearance but has held a security clearance as recently as 2009.

Applicant's various delinquent debts total over \$52,000. He attributed his financial problems to his wife's health issues of the past ten years; being unemployed from November 2021 until she passed away in March 2022; and being underemployed since June 2022.

SOR ¶ 1.a: past-due account placed for collection in the amount of \$3,009. In response to October 2022 interrogatories, Applicant stated payment arrangements had not been made and that he had not been making payments. In his Answer he provided an account history that showed his last payment had occurred in December 2021 and that he had a payment schedule established. The schedule showed a payment scheduled for January 2023 and monthly payments of \$31.34 through December 2030 to settle the account in full. (Answer at 2, 6, 8-12.) The February 2023 credit report shows the account delinquent with a last payment of December 2021. (Item 5 at 4.)

SOR ¶ 1.b: past-due account charged off in the amount of \$2,358. Applicant created a repayment plan of \$100 a month with the creditor and provided a copy of the payment plan showing the debt would be paid off by October 2024. (Answer at 13.) The

February 2023 credit report shows the account charged off, with a last payment of November 2019. (Item 5 at 4.)

SOR ¶ 1.c: past-due mortgage account in the amount of \$5,921 with a total loan balance of \$257,508. The February 2023 credit report reflects “not more than three payments past due.” The last payment was December 2022. (Item 5 at 6.) He provided a current mortgage history showing the mortgage in good standing and that his last payment had been received on March 3, 2023.

SOR ¶ 1.d: past-due account placed for collection in the amount of \$1,461. In response to October 2022 interrogatories Applicant stated payment arrangements had been established. In his Answer he provided report that indicated monthly payments of \$30 a month from January 2023 through December 2026 with the final payment in January 2027 of \$21.63. (Item 4 at 5, 29-30; Answer 17-19.) The February 2023 credit report shows the account charged off, with a last payment of November 2021. (Item 5 at 6; Item 6 at 2.) In his Response he provided his payment history, which monthly payments from February 2023 through April 2023. (AE C.)

SOR ¶ 1.e: past-due student loan in the amount of \$740. Applicant admits the debt. His February 2023 credit report states that no more than four payments are past due and that the last payment date was December 2021. (Item 5 at 6.) In his Answer, he provided a repayment plan dated March 15, 2023. He would begin payments of \$75.31 on April 5, 2023, for the next 24 months. After that payments will increase to \$225.77 and he will make 90 payments at this amount starting April 5, 2025.

SOR ¶ 1.f: past-due personal loan in the amount of \$564. Applicant admits the debt and states he is working to restructure the loan. The August 2020 credit report shows the date assigned for the debt as November 2019. (Item 8 at 7.)

SOR ¶ 1.g: past-due account charged off for \$27,889. Applicant admitted the debt and submitted a payment plan letter with his Answer. He and the creditor agreed that he would make 38 monthly payments of \$700 starting March 31, 2023, through April 30, 2026. (Answer at 24.) The February 2023 credit report shows the account charged off, with a last payment of June 2022. (Item 5 at 8.)

SOR ¶ 1.h: past-due account charged off for \$9,145. In response to October 2022 interrogatories Applicant stated payment arrangements had not been made and that he had not been making payments. In his Answer he stated he contacted the creditor and was told no more collections were being made on the account because of how old it was and that it had been charged off.

SOR ¶¶ 1.i-1.j: past-due telecommunication accounts placed for collection in the same amounts for \$792. In his Answer he states these are duplicate debts. He states under SOR ¶ 1.i the debt has been paid in full, and he provided a settlement letter dated December 21, 2022, which showed a \$400 settlement amount. (Answer at 27.) The March 2022 credit report shows two delinquent telecommunication accounts for the same amount with different account numbers. (Item 7 at 3.)

SOR ¶ 1.k: past-due account placed for collection in the amount of \$1,761. In response to October 2022 interrogatories Applicant stated that he had not been making payments. In his Answer he states this is a duplicate debt with SOR ¶ 1.d. The debts do not appear with the same account numbers or relevant dates on the applicable credit reports. (Item 7 at 2; Item 8 at 7.) The account numbers do not align between the February 2023 credit report and the December 2022 credit report. (Item 5 at 6; Item 6 at 2.) The original creditors do align for the February 2023 credit report and August 2020 credit report. (Item 5 at 6; Item 8 at 7.)

SOR ¶ 1.l: failed to file, as required, Federal income tax returns for the tax years 2014, 2015, and 2020. Applicant admits he failed to file, as required, his Federal income tax returns for the tax years 2014, 2015, and 2020. He provided with his Response his Federal income returns for delinquent tax years 2015 and 2020, which were filed in April 2023. He also provided his 2022 Federal return, with a mailing receipt showing it was timely filed. He is still waiting on a W-2 so he can file the 2014 tax return, for which he had filed an extension at the appropriate time in 2015. (Item 4 at 14; Response, AE G, AE I, AE J, AE L.) He was owed a refund in the delinquent years. (Item 4 at 14, 15, 24.) He cited his wife's deteriorating health for not filing his tax returns. (Answer at 1.)

SOR ¶ 1.m: failed to file, as required, [state] income tax return for the tax years 2014, 2015, and 2020. Applicant admits he failed to file, as required, his state income tax return for the tax years 2014, 2015, and 2020. He provided with his Response his state income returns for delinquent tax years 2015 and 2020, which were filed in April 2023. He provided his 2022 state return, with a mailing receipt showing it was timely filed. He is still waiting on a W-2 so he can file the 2014 tax return. (Response, AE G, AE H, AE K, AE M.) He cited his wife's deteriorating health for not filing his tax returns. (Answer at 1.) (Answer at 1.)

Applicant stated in his Answer his wife had multiple serious health issues in the past ten years. She suffered a brain aneurysm back in 2017, which made her health steadily decline for the next five years. He stated by 2021 she was on the "verge of death." He elected to quit his job in November 2021 to care for her. The job he left paid \$160,000 a year. His wife survived for seven more months. During this period his security clearance lapsed. When he returned to the workforce, he could not find a comparable IT position. He took a warehouse position paying him \$41,000 annually. His net pay for a two-week period is \$1,051.93. (Item 4 at 35.) He included his 2016 car note showing he had made his final payment on January 27, 2023. (Answer at 5; AE B; Item 5 at 8.)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants

eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the evidence in the FORM establish the following disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"); AG ¶ 19(c) ("a history of not meeting financial obligations"); and AG ¶ 19(f) ("failure to file or fraudulently filing annual federal, state, or local income tax returns or failure to pay annual federal, state, or local income tax as required").

The following AG ¶ 20 mitigating conditions are potentially applicable:

(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's financial problems were primarily related to his wife's medical problems. Prior to the March 2023 SOR he sought assistance to resolve his mortgage delinquency. He started addressing his delinquent debts in January 2023, after he had found employment. Besides addressing the mortgage delinquency, he provided a documented plans to resolve five SOR debts, which totaled about \$35,457 (SOR ¶¶ 1.a-1.b, 1.d-1.e and 1.g). He paid one debt, SOR ¶ 1.i and disputed SOR ¶ 1.j as being redundant to it. He disputed SOR ¶ 1.k as being redundant to SOR ¶ 1.d, which he has an established payment plan for. The credit reports support his argument for SOR ¶ 1.k being redundant to SOR ¶ 1.d. His 2014 Federal and state tax returns are unresolved but I am satisfied that Applicant's finances are now in order and that he will maintain his payment plans and continue his efforts to resolve his remaining tax issues. A little premature because you have not finished the discussion, and the last sentence in the discussion covers it.

Applicant does not present a perfect case in mitigation, but perfection is not required. A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant still has debts to resolve, but I believe based on the record his problems only arose due to the illness to his spouse. As he recovers from her passing his efforts reflect a sincere intention on his part to address his debts. I find that he has a plan to resolve his financial problems, and he took significant action to implement that plan. He acted responsibly under the circumstances and made a good-faith effort to pay his debts. It will take time, but I am convinced he will eventually resolve his financial problems. See ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009) and ISCR Case No. 09-08462 at 4 (App. Bd. May. 31, 2011): "Depending on the facts of a given case, the fact that an applicant's debts will not be paid off for a long time, in and of itself, may be of limited security concern." The above mitigating conditions are sufficiently applicable to mitigate financial considerations security concerns.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a

